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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

MICHAEL JAMES HANNA,

Plaintiff and Appellant,

v.

ANGELA MOREIRA,

Defendant and Respondent.

E070310

(Super.Ct.No. HEC1800581)

OPINION

APPEAL from the Superior Court of Riverside County. Kathleen M. Jacobs,  
Temporary Judge. (Pursuant to Cal. Const., art. VI, § 21.) Affirmed.

Michael James Hanna, in pro. per., for Plaintiff and Appellant.

No appearance for Defendant and Respondent.

Michael James Hanna appeals from the trial court's denial of his request for a civil harassment restraining order (Code Civ. Proc., § 527.6, subd. (a)(1))<sup>1</sup> against Angela

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<sup>1</sup> All further statutory references are to the Code of Civil Procedure.

Moreira.<sup>2</sup> Hanna contends that (1) the court abused its discretion by denying the order because he submitted substantial uncontroverted evidence of harassment, and (2) the order was obtained through an irregularity in the proceedings. We conclude that these contentions do not have any merit and affirm.

### BACKGROUND<sup>3</sup>

In 2017, Hanna and Moreira were both involved in Team Hemet Baseball (THB), a volunteer-run little league baseball organization in their community. Hanna was the president of THB, and Moreira was a volunteer, a coach, and a parent of several players in the league. Two days before opening ceremonies, Hanna expelled Moreira from the league.

In June and July 2017, Moreira sent two emails to the Western Region Director of Little League and Softball, along with other individuals presumably affiliated with the little league (based on their email addresses), complaining in general about how THB was managed and about specific conduct of Hanna. At the same time in June, Hanna emailed some individuals in the little league, complaining about an “attack on [the] league and [Hanna] personally” “by Howard Reeves by proxy.” In September 2017, Hanna and Moreira exchanged emails about a meeting being held by THB at which elections were taking place. Moreira indicated that she intended to attend. Hanna demanded that

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<sup>2</sup> Moreira did not file a respondent’s brief, so we “decide the appeal on the record, the opening brief, and any oral argument by the appellant.” (Cal. Rules of Court, rule 8.220(a)(2).)

<sup>3</sup> “We summarize the facts in the light most favorable to the judgment.” (*Brekke v. Wills* (2005) 125 Cal.App.4th 1400, 1405.)

Moreira not attend the meeting, not contact Hanna for any reason, “not publish information regarding [Hanna] in social media or any other vehicle,” not appear at any function of THB, and issue Hanna “a written apology for [Moreira’s] past acts.” In return, Moreira stated, “I would like an apology for things you have said about me on social media in the past and would appreciate it if you could stop using my name and emailing threats,” and asked Hanna to “keep [his] distance” from her at the election meeting.

On March 22, 2018, Hanna filed an application for a civil harassment restraining order against Moreira, seeking protection for himself, his wife, and his three children in the form of an immediate temporary restraining order and then an injunction. Hanna alleged that Moreira harassed him on March 9, 2018, by joining a baseball team on which Hanna had played for four years, in a city in which neither Hanna nor Moreira resided. Hanna further alleged that the March incident was part of a pattern of harassing conduct engaged in by Moreira against him, starting in June 2017, with the first email that she sent to the little league. Hanna claimed that he had suffered serious emotional distress as a result of the harassment. In support, Hanna described the purported incidents of harassment in a three-page statement attached to the application and attached five exhibits, including copies of all of the referenced email messages. The application was signed under penalty of perjury.

On the same day the application was filed, the trial court denied Hanna’s request for a temporary restraining order and set a hearing for April 10, 2018, to decide whether an injunction prohibiting harassment should issue. Both Hanna and Moreira appeared

and represented themselves at the hearing on April 10. The day before, Hanna filed another declaration in support of his application with supporting exhibits, complaining about the conduct of a purported friend of Moreira's who worked at the courthouse and whom Hanna alleged was working in conjunction with Moreira to "conspir[e] to obstruct justice and tamper[] with witnesses by preventing them from testifying."

At the contested hearing, the only conduct of Moreira's that Hanna complained of was that Moreira had "become part of the same recreational club" of which Hanna belonged. Hanna further stated that he had received recent "[b]latant death threats" but admitted that they were not made by Moreira but came from another person he considered to be a co-conspirator of Moreira's. Moreira did not testify or submit any evidence. The court denied the application.

## DISCUSSION

Hanna contends that the trial court abused its discretion by denying the restraining order because Hanna submitted substantial, uncontroverted evidence of unlawful harassment. In the alternative, he contends that the denial was the result of an irregularity in the proceedings. We disagree with both contentions.

We review the denial of a protective order under section 527.6 for abuse of discretion, and the trial court's factual findings (express and implied) are reviewed for substantial evidence. (*Parisi v. Mazzaferro* (2016) 5 Cal.App.5th 1219, 1226 (*Parisi*); *R.D. v. P.M.* (2011) 202 Cal.App.4th 181, 188.) "We resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by

substantial evidence which is reasonable, credible and of solid value.” (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762 (*Schild*).) “Whether the facts are legally sufficient to constitute civil harassment within the meaning of section 527.6 is a question of law reviewed de novo.” (*Parisi, supra*, at p. 1226.)

“The elements of unlawful harassment, as defined by the language in section 527.6, are as follows: (1) ‘a knowing and willful course of conduct’ entailing a ‘pattern’ of ‘a series of acts over a period of time, however short, evidencing a continuity of purpose’; (2) ‘directed at a specific person’; (3) ‘which seriously alarms, annoys, or harasses the person’; (4) ‘which serves no legitimate purpose’; (5) which ‘would cause a reasonable person to suffer substantial emotional distress’ and ‘actually cause[s] substantial emotional distress to the plaintiff’; and (6) which is not a ‘[c]onstitutionally protected activity.’” (*Schild, supra*, 232 Cal.App.3d at p. 762.)

Hanna first contends that Moreira’s failure to submit evidence, written or testimonial, amounts to a tacit admission of the allegations in the application. That is incorrect. As the respondent, Moreira was not required to submit any evidence. Hanna had the burden of proving by clear and convincing evidence that Moreira’s conduct constituted harassment under section 527.6. (*Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 861 [“As a general rule, the ‘party desiring relief’ bears the burden of proof ... ”]; Evid. Code, §§ 500, 527.6, subd. (i).)

Because the trial court did not state what evidence it relied upon either on the record or in the minute order denying the injunction, we presume that the trial court considered all of the evidence before it in making its determination. In the absence of

express findings, we further presume under the doctrine of implied findings that “the trial court impliedly made every factual finding necessary to support its decision.” (*Fladeboe v. American Isuzu Motors, Inc.* (2007) 150 Cal.App.4th 42, 48.)

Here, contrary to Hanna’s assertion that Moreira’s conduct did not serve any legitimate purpose other than causing Hanna emotional distress, substantial evidence supported the trial court’s implicit factual finding that Moreira did not engage in a course of conduct that served no legitimate purpose.

Of the 13 numbered allegations of purported misconduct by Moreira in Hanna’s application, nearly half were about the email messages that Moreira sent to the little league and exchanged with Hanna. Contrary to Hanna’s conclusory allegations about the messages being sent for the “sole purpose” of causing him emotional distress, nothing in any of the messages at issue supports a finding that they did not serve a legitimate purpose. On their face, the email messages Moreira sent in June and July 2017 to the upper echelons of the little league complaining about Hanna served the legitimate needs of allowing Moreira to seek recourse for perceived wrongs against her and to notify the little league of perceived problems with how THB was being managed. Though Hanna contends that these emails contain “provably false, defamatory and inflammatory accusations,” the record contains no evidence to support those conclusory allegations. Nor was there any evidence that Moreira’s emails were sent for something other than her stated legitimate purposes. Similarly, Moreira’s stated reason for emailing Hanna in September 2017 was to indicate her intent to attend a THB meeting at which elections were being held. It would have been reasonable for the trial court to infer that her

attendance at the election served the legitimate purpose of allowing Moreira to participate in or to observe the organization's electoral process. The record contains no evidence supporting Hanna's conclusory allegation that Moreira's intended attendance at the meeting amounted to a threat of "continued stalking contact."

It also would have been reasonable for the trial court to infer that Moreira joined the same baseball team as Hanna for the legitimate purpose of participating in a team-based recreational activity. While joining a team other than the one to which Hanna belonged might have been advisable given the acrimonious relationship between the two, there was no evidence that Moreira joined the same team as Hanna "for the sole purpose of causing [him] shock and humiliation." In fact, there was no evidence that Moreira knew that Hanna was even on the team before she joined. Moreover, as the trial court noted, there is nothing inherently sinister about Moreira joining a team in a different city. There is no evidence in the record about why Moreira joined the team, and we must draw all reasonable inferences in support of the trial court's finding.

Substantial evidence supports the trial court's express and implied findings that Moreira's conduct served legitimate ends and thus did not constitute harassment.<sup>4</sup> (*Byers v. Cathcart* (1997) 57 Cal.App.4th 805, 812 ["Legitimacy of purpose negates

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<sup>4</sup> Hanna contends that the trial court found that the conduct at issue was constitutionally protected. This contention is not supported by the record. Because the trial court's implied factual finding that Moreira did not engage in a course of conduct that served no legitimate purpose is supported by substantial evidence, and because legitimacy of purpose negates harassment, we need not address Hanna's argument about whether Moreira's conduct was constitutionally protected.

harassment.”].) There is also substantial evidence to support the trial court’s conclusion that the remaining allegations did not amount to unlawful harassment.

Moreira’s declaration also alleged some conduct for which there could have been no legitimate purpose. The trial court was not required to credit those allegations, however, because the court could have found that Hanna was not credible. The allegations include (1) Moreira’s purported threat to Hanna sometime in October 2017 that “bad things would happen” to Hanna if Moreira were not allowed to remain in THB, (2) Moreira’s supposed threat at some point between June 2017 and March 2018 to “have [Hanna’s] knee’s broken with a baseball bat (boldface omitted),” and (3) Moreira’s purported stalking and cyber-bullying of Hanna. In the three-page declaration Hanna submitted in support of his application, he cited the attached exhibits as support for most of those claims. But none of the exhibits supported his claims, and Hanna’s claims instead amounted to misrepresentations of the documentary evidence. For instance, Hanna claimed that in the June 2017 email from Moreira to the little league, Moreira “admit[ted] to attempting to accost [Hanna] and [his] family in a local restaurant and present[ed] [his] efforts at disengagement and de-escalation as an opportunity for [Moreira] to chase [Hanna] and [his] family down in the parking lot as the result of her being ‘furious.’” (Boldface omitted.) In the cited email, however, Moreira stated that she was attending an informal gathering with other families who had concerns about Hanna similar to her own, and “someone caught [Hanna] taking photos of [their] families. When [they] walked over to [Hanna] he RAN away jumped in his car and peeled off. [Moreira] was furious about [Hanna’s] behavior and felt unsafe for [her]self



and [her] children.” Thus, contrary to Hanna’s characterization, Moreira did not even admit to being involved in walking over to Hanna, let alone to attempting to accost Hanna and his family. Given Hanna’s misrepresentations of the evidence, the trial court was free to conclude that Hanna was not credible and to disbelieve his attestations and testimony entirely. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1043 [“A trier of fact is free to disbelieve a witness, even one uncontradicted, if there is any rational ground for doing so.”].) We presume that the trial court disregarded all of the allegations of conduct that could not serve a legitimate purpose based on a finding that Hanna was not credible, and we will not disturb that implied finding on appeal.

In support of the application, Hanna also relied on conduct that he could not attribute directly to Moreira, such as death threats that he had admitted to receiving from someone else and an allegation of child abuse that was made to the county about Hanna by an unidentified person. In addition, all of the evidence submitted by Hanna the day before the hearing supported Hanna’s allegation that he suspected that an employee at the courthouse was somehow acting in concert with Moreira to interfere with Hanna’s filing of documents with the court. Hanna contends that the trial court did not consider the late-filed declaration and accompanying documentation because of an “[i]rregularity in the proceedings,” which was allegedly caused by the court employee delaying the declaration from being filed until after the contested hearing. The record does not corroborate this claim, however, and we reject it. The declaration is file-stamped by the court as having been filed on April 9, 2018. We thus presume that the document was

filed on that date (the day before the contested hearing) and considered by the trial court.<sup>5</sup> (*In re Marriage of Mosley* (2010) 190 Cal.App.4th 1096, 1103 [a judgment or an order is presumptively filed on the file-stamped date].) In any event, even assuming the filed document was not considered by the trial court, there was no prejudice. None of the allegations in the declaration involved conduct attributable to Moreira. Rather, Hanna attached copies of text messages from a “long-time acquaintance” of his and an alleged “agent of” Moreira’s purporting to prove that Moreira was “conspiring to obstruct justice.” However, the complained of conduct is all attributable to other actors, not Moreira. Complained of conduct that is not attributable to Moreira does not support a finding that Moreira engaged in harassment.

In sum, we conclude that the trial court acted well within its discretion in denying Hanna’s request for a civil harassment restraining order against Moreira because the

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<sup>5</sup> In support of his contention that there was an irregularity in the proceedings, Hanna has requested that we take judicial notice of various documents, including a filing from another lawsuit involving Hanna and a June 20, 2018, letter to Hanna from the Chief Deputy of Operations of the Riverside County Superior Court. Hanna contends that these documents support the claim that a court employee failed to timely file his April 9, 2018, declaration and improperly failed to file an earlier letter that Hanna sent to the court complaining about the court clerks. The June 20 letter from the court does not establish that the April 9 declaration was in fact filed at some later point. The letter acknowledges that the concerns about the staff at the courthouse as outlined in Hanna’s April 10, 2018, letter were “addressed” and that “[i]t is the court’s expectation that documents presented for filing will be processed timely.” This is not enough to rebut the presumption that the declaration was filed on April 9, 2018, the date it was file-stamped. Furthermore, as we explain, there was no prejudice even if the declaration was filed after the hearing, as Hanna claims. Because the documents are not relevant to dispositive issues on appeal, we decline Hanna’s request to take judicial notice. (*Arce v. Kaiser Foundation Health Plan, Inc.* (2010) 181 Cal.App.4th 471, 482.)

evidence was insufficient to establish the existence of unlawful harassment as defined by section 527.6.

#### DISPOSITION

We affirm the April 10, 2018, order denying the civil harassment restraining order. Respondent is entitled to her costs of appeal.

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MENETREZ  
J.

We concur:

McKINSTER  
Acting P. J.

MILLER  
J.